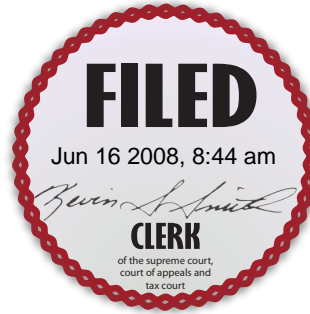


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KENNETH P. JOHNSTON,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 02A03-0712-PC-601

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-8902-CF-79

June 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Kenneth P. Johnston appeals the denial of his petition for post-conviction relief,

raising one issue: whether the post-conviction court erred when it denied his Motion to Correct Erroneous Sentence.

We affirm

In 1989, Johnston was convicted of robbery as a Class A felony, two counts of attempted murder, each as a Class A felony, two counts of confinement, each as a Class B felony, murder, a felony, and was adjudicated an habitual offender. He received a total sentence of 230 years. In October 1989, Johnston filed his direct appeal. While that appeal was pending, the Department of Correction notified the trial court that Johnston's sentence for his habitual offender enhancement had not been attached to a particular crime as is required under IC 35-50-2-8. In response, the trial court – while the direct appeal was still pending – amended the sentencing order to attach the habitual offender enhancement to Johnston's murder conviction and sentence. Over seventeen years later, Johnston filed a Motion to Correct Erroneous Sentence claiming that he was entitled to a correction of his sentence because the original habitual offender enhancement was not attached to a particular crime and that, therefore, he should be granted a new sentencing hearing at which “[he] is present with counsel.” *Appellant's App.* at 19-20. The post-conviction court denied his motion, and Johnston now appeals.

We conclude that the post-conviction court did not err when it denied Johnston's motion. Notwithstanding that this issue is moot,¹ as the trial court corrected the error in

¹ “An issue is deemed moot when it is no longer ‘live’ or when the parties lack a legally cognizable interest in the outcome of its resolution.” *Jones v. State*, 847 N.E.2d 190, 200 (Ind. Ct. App. 2006), *trans. denied*. Therefore, “when we are unable to provide effective relief upon an issue, it is moot, and we will not reverse the trial court's determination ‘where absolutely no change in the status quo will result.’” *Id.* (quoting *In re Utley*, 565 N.E.2d 1152, 1154 (Ind. Ct. App. 1991)).

1990, the trial court was not required to make the correction in his presence as he requested. Because the correction made did not require any discretion by the trial court, and it was only a technical correction, nothing required the supervision of either Johnston or his attorney, and the fact that he was not present when the correction was made was merely a technical error that warrants no relief. *See Corn v. State*, 659 N.E.2d 554, 558 (Ind. 1995) (finding no utility in remanding case to trial court where trial court improperly enhanced five concurrent convictions due to an habitual offender enhancement because it was merely a technical error) (citing *Holbrook v. State*, 556 N.E.2d 925, 926 (Ind. 1990)).

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.